

***United States Court of Appeals
for the Second Circuit***



APPENDIX

STANLEY S. ZINNER, ESQ.,
Attorney for Appellant
FAON DE JESUS RODRIGUEZ
404 Avenue of the Americas
New York, New York 10011
(212) 594-4903

PAGINATION AS IN ORIGINAL COPY

TY OFFENSE PO	JUDGE/MAGISTRATE Assigned	U.S.	Case Filed Mo	Day	76	PRATT 299
OR OFFENSE MO	0715	VS. GLEN THOMAS BEVERLY	14	27		
DEMEASOR MO	207	(LAST, FIRST, MIDDLE)	No. of Defs	2		
FELONY Fel	1					
	District Office					

US TITLE/SECTION
 21-841(a)(1), 846
 18-2

OFFENSES CHARGED
 Did combine to unlawfully possess 5
 and did distribute cocaine

CLOSED

U.S. MAG. CASE NO	76 M 450
Denied	Set
\$10,000	
Date	
Bail Not Made	
Status Changed (See Docket)	

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Begun	INDICTMENT X Information 4-27-76	ARRAIGNMENT 5/7/76	TRIAL
Summons Served	Indict. Waived	Supervised	
First Appearance 3-3-76	In Charging District		

Search Warrant Issued	DATE	INITIAL NO.	MAGISTRATE	INITIAL NO.	OUTCOME
Summons Issued	3-3-76	MS/070B	INITIAL APPEARANCE DATE	3-3-76	
Arrest Warrant Issued			PRELIMINARY EXAMINATION	3-24-76	
COMPLAINT			REMOVAL HEARING		
OFFENSE (in Complaint)			INTERVIEWING		

3-3-76 MS/070B
 Possession with intent to distribute app. four ounces of cocaine.
 T21 USC Section 841(a)(1)

U.S. Attorney or Asst.

Could
 AUSA - Carter.

ATTORNEYS
 LEGAL AID
~~Legal Aid Society~~
 125-10 Queens Blvd., Kew Gardens
 11415. (212) 228-5000.

* Show last names and suffix numbers of other defendants or same defendant in multiple.

DE JESUS RODRIGUEZ 1	
DATE	(DOCUMENT NO.)
4-27-76	Before BARTELS, J - Indictment filed
5/7/76	Before WEINSTEIN, J.- Case called- deft and counsel present- arraigned and enters a plea of not guilty- pre-trial conference held and concluded- bail contd- trial set for 6/21/76
5/7/76	Notice of appearance filed
5/7/76	Conditions of bail release filed
5/14/76	Notice of motion to suppress filed
7-7-76	Before PRATT, J - Case called. Deft & counsel present. Adj'd to 7-26-76 at 9:45 A.M. for status conference.
7/26/76	Before PRATT, J. - Case called. Defts & Counsel present. Defts waive speedy trial rights. Adj'd without date.
9/28/76	Notice of Readiness for trial filed.
9-29-76	Before PRATT, J - case called - deft & atty present - adj'd to Oct. 14, 1976 to set date for trial
10/14/76	Before PRATT, J.- Case called. Counsel present. date for suppression hearing.(To follow trial in

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3151(h)

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY				For Filing U.S. A.
			Start Date (a)	End Date (b)	Li Code (c)	Total Days (d)	
10-27-76	Before Pratt, J. - Case Called. Deft. & Counsel Present. Hearing ordered & Begun. Hearing to continue on 10-29-76 at 10:30 A.M.						
10-29-76	Before Pratt, J. - Case Called. Deft & Counsel present. Hearing resumed. Hearing concluded. Deft's motions to suppress. Motion argued and denied. Deft. waive his rights to a Speedy Trial on the record. Adj'd. to 12-9-76 at 9:00 A.M. for calendar call.						
12-9-76	Before PRATT, J. - Case called. Deft & counsel present. Adj'd to 12-16-76 at 10 A.M. for trial.						
12-16-76	Stenographer's Transcript dated October 27, 1976 filed.						
12-16-76	Stenographer's Transcript dated October 29, 1976 filed.						
12/16/76	Voucher for compensation for expert services filed.						
12-20-76	Before PRATT, J. - Case called - Deft and counsel present - Trial ordered and begun - Jury selected and sworn - Both sides open - Trial cont'd to 12-21-76 at 10:00 A.M..						
12-21-76	Before PRATT, J. - Case called - Defts and counsel present - Trial resumed - Government rests - Trial cont'd to 12-22-76 at 9:30AM						
12-22-76	Before Pratt, J. - Case Called. Deft. & Counsel present. Trial resumed. Deft. rests. Govt. rests. Deft. renews his motion to dismiss. Motion denied. Marshals sworn. Alternates discharged. Jury retires at 1:15 P.M. Judge charges Jury. Order of Sustenance signed. Jury returns with a verdict of GUILTY on counts 1, 4 and 5 and not guilty on counts 2 and 3. Trial concluded. Jurors discharged. Bail continued. Sentence adjd. without date.						
12-27-76	By Pratt, J. - Order of Sustenance filed.						
3-2-77	Before Pratt, J. - case called - Defendant and counsel present - Defendant sentenced to: on counts 1, 4, and 5 under the Youth Corrections Act, T-18, U.S.C., Sec. 5010(b) for treatment and supervision until released by the U.S. Parole Commission pursuant to T-18, U.S.C., Sec. 5017. Defendant to serve a Special Parole Term of 3 years after completion of confinement in prison. Stay of execution of sentence pending outcome of appeal. Sentence to run concurrent on counts 1, 4 and 5. Clerk to file Notice of Appeal in forma pauperis.						
3-2-77	Judgment and commitment filed. Certified copies to Probation, US Attorney and US Marshal.						
3-2-77	Notice of Appeal filed.						
3-2-77	Copy of docket entries and duplicate of Notice of Appeal mailed to the C of A.						
3-2-77	Form A (copy of) filed.						
END AND PROCEED TO NEXT PAGE							
DATE	RECEIVED	COMPLER	AT	RECEIPT NUMBER	C.D. NUMBER		

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

GLEN THOMAS BEVERLY

76 299

Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
4/11/77	(Document No.) Record on appeal certified and hand delivered to the C of A by Joan Gill.				
4/12/77	Notice of motion for correction of illegal sentence filed.				
4-13-77	Transcript filed dated July 26, 1976				
4-15-77	5 volumes of transcripts filed (dated May 7, 1976(2) Dec. 20, Dec. 21 and Dec. 22, 1976)				
4/18/77	Sten's transcript dtd 7/7/76 filed. JLJ				
4.20.77	Voucher for Compensation of Expert Services filed and forwarded to Washington for Payment.				
4.20.77	By Pratt, J.- Order filed that the portion of the Sentence adding a special parole term of three (3) years at the expiration of custody pursuant to Title 18, U.S.C., Section 5010(b) is vacated. Certified Copies to Marshal and Probation.				GP
4.20.77	Acknowledgment received from the Court of Appeals for the Record on Appeal filed.				GP
5-5-77	Two transcripts returned from the court of appeals one dated Oct. 27, 1976 and one dated Oct. 29, 1976 (by hand)				
5-5-77	Supplemental record on appeal certified and delivered to the court of appeals (handed to Joan Johnson for delivery (Legal Amd) receipt in file.				

A TRUE COPY ATTEST
5/5/77
LEWIS ORGEL CLERK
BY *[Signature]* DEPUTY CLERK

1976
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME AM.....
PM.....

- - - - - X

UNITED STATES OF AMERICA

I N D I C T M E N T

- against -

Cr. No. _____
(T. 21 U.S.C. §841(a)(1) and
§846 and T. 18 U.S.C. §2)

FAON DE JESUS RODRIGUEZ and
GLEN THOMAS BEVERLY,

Defendants.

- - - - - X

THE GRAND JURY CHARGES:

76 CR 299

COUNT ONE

On or about and between November, 1975 and March, 1976, both dates being approximate and inclusive, within the Eastern District of New York, the defendants FAON DE JESUS RODRIGUEZ and GLEN THOMAS BEVERLY and Robert Gonsieski, named as a co-conspirator but not as a defendant herein, did knowingly, willfully and unlawfully combine, conspire, confederate and agree, together and with each other, to knowingly and intentionally distribute and possess with intent to distribute, a quantity of cocaine, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1). (Title 21, United States Code, Section 846).

COUNT TWO

On or about the 4th day of November 1975, within the Eastern District of New York, the defendants FAON DE JESUS RODRIGUEZ and GLEN THOMAS BEVERLY did knowingly, intentionally and unlawfully possess with intent to distribute approximately four (4) ounces of cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT THREE

On or about the 4th day of November 1975, within the Eastern District of New York, the defendants FAON DE JESUS RODRIGUEZ and GLEN THOMAS BEVERLY did knowingly, intentionally and unlawfully distribute approximately four (4) ounces of cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT FOUR

On or about the 3rd day of March 1976, within the Eastern District of New York, the defendants FAON DE JESUS RODRIGUEZ and GLEN THOMAS BEVERLY did knowingly, intentionally and unlawfully possess with intent to distribute approximately four (4) ounces of cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT FIVE

On or about the 3rd day of March 1976, within the Eastern District of New York, the defendants FAON DE JESUS RODRIGUEZ and GLEN THOMAS BEVERLY did knowingly, intentionally and unlawfully distribute approximately four (4) ounces of cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

A TRUE BILL.

Joseph M. O'Mahoney

FOREMAN

David G. Trager
DAVID G. TRAGER
United States Attorney

No. _____

UNITED STATES DISTRICT COURT

EASTERN District of NEW YORK

Criminal Division

THE UNITED STATES OF AMERICA

vs.

FAON DE JESUS RODRIGUEZ and

GLEN THOMAS BEVERLY,
Defendants.

INDICTMENT

T. 21, U.S.C. §841(a)(1);
§846 and T. 18 U.S.C. §2

A true bill,

Foreman.

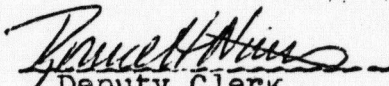
Filed in open court this _____ day
of _____, A. D. 19____

Clerk.

Ball, § _____

ZACHARY W. CARTER, AUSA
596-3490

The Court, having been satisfied that
a majority of the Grand Jury of FEBRUARY 5th
have concurred in this True Bill,
orders the Indictment filed.


Deputy Clerk

THE COURT: Members of the jury:

We are now at the stage of the trial where you are about to undertake your final function as jurors. Your duty is a serious and important one. In performing it you actively share with me the responsibility of administering justice to law and the evidence in this case.

Your oath as jurors obliges you to discharge this final task in an attitude of complete fairness and impartiality. And as was emphasized by me when you were selected as jurors, without bias or prejudice for or against the Government or the defendants as parties to this controversy.

You must not permit yourselves to be governed by sympathy or any other consideration which is not founded in the evidence and in these instructions on the law.

The case is important to the Government, since the enforcement of the criminal laws is of prime importance to the welfare of the community.

Obviously, it is equally important to these defendants who are charged with serious crimes and have the right to receive a fundamentally fair trial, and the community has an interest in that, too.

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2 The fact that the Government is a party
3 entitles it to no greater consideration than that
4 accorded to any other party in a litigation. By the
5 same token, it is entitled to no less consideration.
6 All parties, the Government and the individuals alike,
7 stand as equals before the bar of justice.

8 In this charge I shall describe for you first
9 the general principles applicable to all criminal
10 trials and then the nature of the charges in this
11 case, and next the specific rules of law which are
12 applicable to those charges, and finally something
13 about how you should go about reaching a verdict.

14 First, as to the general principles applicable
15 to all criminal trials.

16 Your final role is to decide and pass upon the
17 fact issues in the case.

18 You are the sole and exclusive judges of the
19 facts. You determine the weight of the evidence.
20 You appraise the credibility of the witnesses. You
21 draw the reasonable inferences from the evidence.

22 My function now is to instruct you as to the
23 law, and it is your duty to accept these instructions
24 as to the law and to apply them to the facts as you
25 may find them.

1
2 With respect to any fact matter, it is your
3 recollection and yours alone that governs. Anything
4 that counsel, either for the Government or the
5 defense, may have said with respect to matters in
6 evidence, whether during the trial, in a question,
7 in argument, in summation, is not to be substituted
8 for your own recollection of the evidence.

9 So, too, as to any matters in evidence, anything
10 I may have said during the trial or may refer to in
11 the course of these instructions is not to be taken
12 in place of your own recollection. Keep in mind
13 throughout your deliberations that I have no view
14 whatsoever as to the guilt or innocence of these
15 defendants.

16 An indictment is merely an accusation, a
17 charge. It is not evidence of a defendant's guilt.

18 Since each defendant has pled not guilty, the
19 Government has the burden of proving the charges
20 against each defendant beyond a reasonable doubt.
21 A defendant does not have to prove his innocence.

22 On the contrary, each defendant is presumed
23 to be innocent of the accusations contained in the
24 indictment.

25 As to each defendant this presumption of

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2 innocence was in his favor at the start of the trial.
3 It continued in his favor throughout the entire trial.
4 It is in his favor even as I instruct you now. It
5 remains in his favor during the course of your
6 deliberations in the jury room. It is removed only
7 if and when you are satisfied that the Government has
8 sustained its burden of proving the defendant's
9 guilty beyond a reasonable doubt. If the Government
10 has failed to sustain that burden the presumption of
11 innocence alone is sufficient to acquit the defendant.

12 The fact that the defendants have been tried
13 together in one trial is a legal decision made by
14 the Court and is a fact beyond the control of the
15 defendants. You are to draw no unfavorable inference
16 against either of the defendants because of the fact
17 that they have been tried here together.

18 I have used the term reasonable doubt. What is
19 a reasonable doubt?

20 The words almost define themselves -- that there
21 is a doubt founded in reason and arising out of the
22 evidence in the case or the lack of evidence.

23 It is a doubt which a reasonable person has
24 after carefully weighing all the evidence.

25 Reasonable doubt is a doubt which appeals to

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2 your reason, to your judgment, to your common sense
3 and experience.

4 It is not caprice, whim, speculation, conjecture
5 or suspicion. It is not an excuse to avoid the
6 performance of an unpleasant duty. It is not sympathy
7 for a defendant.

8 If after a fair and impartial consideration of
9 all the evidence you can candidly and honestly say
10 that you are not satisfied of the guilt of a defendant,
11 that you do not have an abiding conviction of his
12 guilt, in sum, if you have such a doubt as it would
13 cause you as prudent persons to hesitate before acting
14 in matters of importance to yourselves, then you have
15 a reasonable doubt and in that circumstance it is
16 your duty to acquit.

17 On the other hand, if after such an impartial
18 and fair consideration of all the evidence, you can
19 candidly and honestly say that you do have an abiding
20 conviction of the defendants guilt, such a conviction
21 as you will be willing to act upon in important and
22 weighty matters in personal affairs of your own life,
23 then you have no reasonable doubt and under such
24 circumstances it is your duty to convict.

25 One final word on this subject.

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2 Reasonable doubt does not mean a positive
3 certainty or beyond all possible doubt. If that were
4 the rule few persons, however guilty they might be,
5 would be convicted.

6 Since it's practically impossible for a person
7 to be absolutely and completely convinced of any
8 controverted fact, the law in a criminal case is that
9 it is sufficient that the guilt of a defendant is
10 established beyond a reasonable doubt, not beyond all
11 possible doubt.

12 Nor is it the Government's burden to prove each
13 and every bit of evidence to be true beyond a reason-
14 able doubt. Its burden is to prove beyond a reasonable
15 doubt each and every essential element of the crime
16 charged. And in a moment I will say more about the
17 elements of the various crimes here.

18 Reasonable doubt may arise from the failure of
19 the Government to produce evidence.

20 A defendant is not obligated to present
21 evidence in his own favor. He has the right to rely
22 on the failure of the Government to prove its case.
23 He may also rely on evidence brought out on cross-
24 examination of witnesses called by the Government.

25 On the other hand, a defendant has the power

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2 to subpoena anyone in support of his position if he
3 so chooses and he may exercise that power if he so
4 chooses.

5 I have used the term "inference."

6 An inference is a conclusion which reason and
7 common sense lead you to draw from the facts which
8 have been established by the evidence in the case.
9 Always it is the jury which may draw the inferences.

10 Evidence may be either direct or circumstantial.

11 Direct evidence is that which is given of
12 actual or personal knowledge of the fact in question.
13 One, who with his own eyes sees a man fire a gun and
14 tells what he saw, has given direct evidence of the
15 shooting.

16 In the absence of direct evidence, however,
17 reliance is often placed upon circumstantial evidence,
18 which does not tend to establish the fact in question
19 directly, but rather does so indirectly by establishing
20 surrounding circumstances from which the fact in
21 question can be inferred.

22 Thus, if our witness to the shooting had not
23 actually been there to see it, but after hearing a
24 shot arrived moments later and saw one man holding
25 a smoking gun and the other lying on the ground, his

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2 testimony would tend to prove the shooting. But it
3 would be indirect or circumstantial evidence since
4 it would be evidence of surrounding or collateral
5 facts from which the fact in question, that is, the
6 shooting itself, might be inferred.

7 What is the evidence in this case which you
8 may consider?

9 It consists of sworn testimony of witnesses
10 regardless of who calls them; exhibits received in
11 evidence regardless of who produces them; and any
12 fact which may be admitted or stipulated to by the
13 attorneys.

14 What is not evidence?

15 Statements or arguments of counsel in opening,
16 summation and in the trial are not evidence.

17 Statements by me at any time are not evidence.

18 Anything I have ordered stricken from the
19 record or instructed you to disregard is not evidence.

20 Any question to which an objection has been
21 sustained, you are not to speculate on what the
22 answer might have been if I had permitted an answer
23 to be given.

24 Now let us turn to the charges which are made
25 in the indictment against the defendants.

At the outset I want to reemphasize that the indictment merely states the charges. It has no weight as evidence, none at all.

This indictment contains five counts. Each count charges each defendant with one offense.

Count number one charges the defendants with a conspiracy. To make my discussion of that count easier to understand, however, I am going to discuss it last.

Count two through five of the indictment are based on Sections 812 and 841(a)(1) of Title 21 of the United States Code.

Section 812 says that cocaine is a Schedule Two Controlled Substance, and Section 841(a)(1) provides in part that it shall be unlawful for any person knowingly or intentionally to distribute or to possess with intent to distribute a controlled substance.

Counts two and three relate to the November 4, 1975, incident described in the testimony.

Counts four and five relate to the March 3, 1976, incident.

Specifically, count two of the indictment charges that on or about the 4th day of November,

1975, the defendants Faon DeJesus Rodriquez and Glenn Thomas Beverly did knowingly, intentionally and unlawfully possess with intent to distribute approximately four ounces of cocaine, a Schedule Two narcotic controlled substance.

Count three charges that on or about the same day, that is, November 4, 1975, the defendants did knowingly, intentionally, unlawfully distribute approximately four ounces of cocaine.

Count four charges that on or about the 3rd day of March, 1976, the defendants did knowingly, intentionally and unlawfully possess with intent to distribute approximately four ounces of cocaine.

And count five charges that on or about the same day, that is, March 3, 1976, the defendants did knowingly, intentionally and unlawfully distribute approximately four ounces of cocaine.

Counts two and four of the indictment charge the defendants with the same crime, knowingly and intentionally possessing cocaine with the intent to distribute it, but on different dates.

You should consider the charges as to each defendant and each date separately.

In order to establish that either of the

1
2 defendants is guilty as charged in either count two
3 or count four the Government must prove beyond a
4 reasonable doubt four essential elements:

5 Number one, that at the time and place charged
6 by the count he possessed a quantity of cocaine;
7 number two, that at that time he knew that he was in
8 possession of cocaine; number three, that his possession
9 of the cocaine was voluntary and intentional;

10 And, four, that at the time of his possession
11 of the cocaine he intended to distribute it to another
12 person or, in other words, at that time he intended
13 to deliver it to another person.

14 In order to convict a defendant on either or
15 both of these possession with intent to distribute
16 counts you must find that the Government has established
17 beyond a reasonable doubt all four of these essential
18 elements with respect to that count, that is, with
19 respect to November 4, 1975, on count two; and March 3,
20 1976, on count four.

21 With respect to either defendant and on each
22 count, if the Government has failed to prove beyond
23 a reasonable doubt any one of the four essential
24 elements that I have just described, you must acquit
25 him on that count.

Counts three and five of the indictment charge the defendant with knowingly or intentionally distributing cocaine, again on the same two dates, November 4 and March 3 respectively.

In order to establish that either of the defendants is guilty as charged in either count three or count five the Government must prove beyond a reasonable doubt three essential elements:

One, that at the time and place charged by the count he distributed cocaine to another person or, in other words, at that time and place he delivered cocaine to another person; two, that at that time he knew he was distributing cocaine;

And, three, that he distributed the cocaine voluntarily and intentionally.

In order to convict the defendant on either or both of these distributing counts you must find that the Government has established beyond a reasonable doubt all three of these essential elements with respect to that count, that is, with respect to November 4, 1975, on count two, and March 3, 1976, on count four.

With respect to either defendant and on each count, if the Government has failed to prove any one

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2 of the three essential elements I have described,
3 you must acquit him on that count.

4 Now, there is an addition on what I told you
5 of what the Government must prove to convict the
6 defendants on counts two through five.

7 Section Two of Title 18 of the United States
8 Code says in part that whoever aids and abets the
9 commission of an offense is punishable as if he
10 committed the offense himself.

11 Thus, if you find beyond a reasonable doubt
12 that one of the defendants committed an offense
13 charged in counts two, three, four or five of the
14 indictment, and that the other defendant aided or
15 abetted the commission of that offense, then you may
16 find the aiding or abetting defendant guilty of the
17 count charging that offense, even if the aiding and
18 abetting defendant did not commit the offense himself.

19 But in order to find that one of the defendants
20 aided or abetted the other defendant in committing an
21 offense charged in one of these counts, you must
22 conclude beyond a reasonable doubt, first that the
23 other defendant has committed the offense, and that's
24 a conclusion which requires a finding, as I have
25 described, that the Government has proven beyond a

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2 reasonable doubt each and every single element beyond
3 a reasonable doubt with respect to that other de-
4 fendant; and, secondly, you must also conclude that
5 the aiding and abetting defendant in some way
6 wilfully associated himself with the other defendant's
7 criminal venture, that is, participated in it wil-
8 fully as it was something he wished to bring about,
9 and also that the aiding and abetting defendant
10 wilfully sought by his action to make the criminal
11 efforts of the other person succeed.

12 Mere association is not a crime. There is no
13 such thing under our law as guilt by association.
14 In fact, the mere presence of the defendant at or
15 about a place where a crime might have occurred, even
16 coupled with that defendant's knowledge of the fact
17 that such a crime is being committed, is insufficient
18 to establish guilt.

19 In order to convict either defendant you must
20 be convinced beyond a reasonable doubt that he
21 knowingly participated in a criminal venture in an
22 effort to make it succeed.

23 In explaining the essential elements of counts
24 two through five, and just now when I explained the
25 meaning of aiding and abetting, I used the term

"Wilfully".

An act is done wilfully if it is done voluntarily and intentionally and with the specific intent to do something that the law forbids, that is to say, it connotes a voluntary, intentional, violation of a known legal duty.

I have also used the term "knowingly".

An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Now let's turn to count one of the indictment, the conspiracy count. It charges that the defendants conspired with Robert Gonciaski to possess cocaine with intent to distribute it and to distribute cocaine.

Specifically, count one reads as follows:

On or about and between November, 1975, and March, 1976, both dates being approximate and inclusive, within the Eastern District of New York, the defendants, Faon DeJesus Rodriguez and Glenn Thomas Beverly and Robert Gonciaski, named as a co-conspirator but not as a defendant herein, did knowingly, wilfully and unlawfully combine, conspire, confederate and agree, together with each other, to

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2 knowingly and intentionally distribute and possess
3 with intent to distribute a quantity of cocaine, a
4 Schedule Two Narcotic Drug Controlled Substance, in
5 violation of the appropriate United States Code.

6 And the charge of conspiracy is brought under
7 the same title, that is, Title 21, United States Code,
8 Section 846.

9 And that section provides that any person who
10 conspires to commit any offense defined in this
11 sub-chapter is guilty of a crime.

12 And, of course, among the offenses in that sub-
13 chapter of the law is possession with intent to
14 distribute and distribution of cocaine.

15 In short, in count one of the indictment the
16 defendants are charged with conspiring to commit the
17 offenses which are charged in counts two, three, four
18 and five of the indictment.

19 Now, conspiracy is an offense separate and apart
20 from any offense that may have been committed pursuant
21 to the conspiracy. That is because the formation of
22 a conspiracy, of a partnership in criminal purposes,
23 is in and of itself pronounced a crime by the
24 statute.

25 There are three elements which make up the crime

1
2 of conspiracy. I shall first explain them to you
3 generally and then I will discuss them in the context
4 of this case.

5 Those three elements are, first, the existence
6 of a conspiracy; second, the accused membership in
7 the conspiracy; and third, an overt act by a conspirator
8 in furtherance of the conspiracy.

9 First is the existence of the conspiracy.

10 A conspiracy is the combination of two or more
11 persons by concerted action to accomplish some un-
12 lawful purpose or to accomplish some lawful purpose
13 by unlawful means.

14 So, a conspiracy is a kind of partnership in
15 criminal purposes in which each member becomes the
16 agent of any other member. The gist of the offense
17 is a combination or an agreement to disobey or to
18 disregard the law.

19 Mere similarity of conduct among various persons
20 and the fact that they may have associated with each
21 other and they may have assembled together and
22 discussed common aims and interests does not necessarily
23 establish proof of the existence of a conspiracy.
24 However, the evidence in the case need not show that
25 the members entered into any express or formal

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2 agreement or they directly by words spoken or in
3 writing stated between themselves what their object
4 or purpose was to be or the details thereof or the
5 means by which the object or purpose was to be
6 accomplished.

7 What the evidence in the case must show beyond
8 a reasonable doubt in order to establish proof that
9 a conspiracy existed is that the members in some way
10 or manner or through some contrivance, positively
11 or tacitly came to a mutual understanding to try to
12 accomplish a common and unlawful plan.

13 The evidence in the case need not establish
14 that all the means or methods were agreed upon to
15 carry out the alleged conspiracy; nor that all means
16 or methods which were agreed upon were actually used
17 or put into operation; nor that all of the persons
18 charged to have been members of the alleged conspiracy,
19 were such.

20 What the evidence in the case must establish
21 beyond a reasonable doubt is that the alleged con-
22 spiracy was knowingly formed, and that one or more
23 of the means or methods were agreed upon to be used
24 in an effort to effect or accomplish some object
25 or purpose of the conspiracy as charged in the

1
2 indictment; and that two or more persons, including
3 the accused, were knowingly members of the conspiracy
4 as charged.

5 Second, as to a defendant's membership in the
6 conspiracy, one may become a member of a conspiracy
7 without full knowledge of all the details of the
8 conspiracy. On the other hand, a person who has no
9 knowledge of a conspiracy but happens to act in a
10 way which furthers some object or purpose in the
11 conspiracy, does not thereby become a conspirator.

12 Before you may find that a defendant or any
13 other person has become a member of a conspiracy, the
14 evidence in the case must convince you beyond a
15 reasonable doubt that the conspiracy was knowingly
16 formed and that a defendant or other person who was
17 claimed to have been a member, wilfully participated
18 in the unlawful plan with the intent to advance or
19 further some object or purpose of the conspiracy.

20 To act or participate wilfully means to act
21 or participate voluntarily or intentionally and with
22 specific intent to do something the law forbids or
23 with specific intent to fail to do something the law
24 requires to be done; that is to say, to act or to
25 participate with a bad purpose either to disobey or

1
2 to disregard the law.

3 So, if a defendant or any other person with
4 understanding of the unlawful character of a plan,
5 knowingly encourages, advises or assists, for the
6 purpose of furthering the undertaking or scheme, he
7 thereby becomes a wilful participant, a conspirator.

8 One wilfully joins an existing conspiracy is
9 charged with the same responsibility as if he had
10 been one of the original instigators of the conspir-
11 acy.

12 In determining whether or not a defendant was
13 a member of a conspiracy, the jury is not to consider
14 what others may have said or done. The membership
15 of a defendant in a conspiracy must be established
16 by the evidence in a case as to his own conduct,
17 what he, himself, wilfully said or did. The same is
18 true in determining whether any other person is a
19 member of the conspiracy.

20 Third, as to the overt act.

21 An overt act is any act knowingly committed
22 by one of the conspirators in an effort to effect
23 or accomplish some object or purpose of the conspir-
24 acy. The overt act need not be criminal in nature
25 if considered separately and apart from the

1
2 conspiracy.

3 Whenever it appears beyond a reasonable doubt
4 from the evidence in the case that a conspiracy
5 existed and that a defendant was one of the members,
6 then the statements thereafter knowingly made and
7 the acts thereafter knowingly done by any person
8 likewise found to be a member of the conspiracy may
9 be considered by you as evidence in the case as to
10 that defendant, even though the statements or acts
11 may have occurred in the absence or without the
12 knowledge of that defendant, provided such statements
13 and acts were knowingly made and done during the
14 continuance of the conspiracy and in furtherance of
15 some object or purpose of the conspiracy.

16 It is not for the jury to assess the degree
17 of culpability, that is, the importance of any con-
18 spirator in the conspiracy, or whether the accused
19 played a major or minor role. The question for you
20 to decide is whether he knowingly and wilfully became
21 a member of the conspiracy.

22 The success or failure of the conspiracy to
23 accomplish the common object or purpose is immaterial.
24 It is enough if the Government prove, one, the
25 agreement to procure and distribute the cocaine; two,

1
2 the accused's membership in the conspiracy; and,
3 three, an overt act by one or more of the conspirators
4 that advanced the purpose of obtaining and distribu-
5 ting the cocaine.

6 Now, let us consider the crime of conspiracy
7 in the context of this case.

8 To find either or both the defendants guilty
9 of conspiracy as charged in count one you must
10 conclude beyond a reasonable doubt, first, that at
11 least two persons, including the defendant Rodriguez,
12 the defendant Beverly and Robert Goncieski, knowingly
13 agreed to work together with the common purpose of
14 either unlawfully possessing cocaine with intent to
15 distribute it or of unlawfully distributing cocaine
16 or both; and, second, that if one defendant was not
17 initially, knowingly, a party to this agreement, he
18 later became a party to it, thereby wilfully joining
19 in its unlawful purpose; and thirdly, that at least
20 one of the co-conspirators, that is, Beverly,
21 Rodriguez or Goncieski, committed one or more overt
22 acts in furtherance of the conspiracy. And as I
23 indicated before, the overt act need not in and of
24 itself be criminal. It's enough if its purpose and
25 effect was to further the conspiracy.

1
2 In short, the Government, to prevail in a
3 conspiracy count must prove beyond a reasonable doubt
4 each of these three essential elements of the crime:
5 One, that the conspiracy existed; two, that the
6 accused wilfully became a member of the conspiracy;
7 and, three, that thereafter one or more of the con-
8 spirators knowingly committed an overt act in
9 furtherance of some object or purpose of the conspiracy.

10 If the Government succeeds in that proof as to
11 a defendant, your verdict should be guilty as to him.
12 If it fails in proving any one of the elements as
13 to a defendant, your verdict on the conspiracy count
14 should be not guilty as to him.

15 Each of the defendants is charged with the
16 crimes described in the indictment on each of the
17 counts, one through five. The jury should, therefore,
18 give separate consideration and render separate
19 verdicts with respect to each defendant. Each
20 defendant is entitled to have his guilt or innocence
21 determined from his own conduct and from the evidence
22 which applies to him as if he were being tried alone.

23 Guilt or innocence is an individual matter
24 and when you deliberate upon the verdicts in this
25 case you must determine the guilt or innocence of

each defendant separately and individually.

You may find either or both of the defendants either guilty or not guilty of each of the counts of the indictment.

The Government must prove every element of a crime charged beyond a reasonable doubt. If the Government fails as to any element, you must acquit on that count.

The fact that one element of the crime may or may not exist has no bearing upon any other element of the crime charged.

You may not infer solely from the existence of one element of the crime, if you conclude that element has been established, you may not infer from that that any other element of the crime has been established.

If any element of a crime has not been established beyond a reasonable doubt, then your verdict on that count must be not guilty.

On the other hand, you must convict the defendant if each of the elements of any crime has been proved as to him beyond a reasonable doubt.

A difficult aspect of any jury's duty is to determine the credibility of the witnesses and to

1
2 weigh their testimony. In this case it is a critical
3 problem.

4 You, the jurors, are the sole judges of the
5 credibility of the witnesses. Credibility refers to
6 the believability of their testimony and the weight
7 their testimony deserves.

8 Your determination of the issue of credibility
9 must largely depend upon the impression that a
10 witness made upon you as to whether or not he was
11 telling the truth or giving you an accurate version
12 of what occurred.

13 When you come into this courtroom and sit in
14 the jury box while the trial is going on, when you
15 are deliberating in the jury room, you have your
16 common sense, your good judgment and your experience
17 with you. You decide whether or not a witness was
18 straightforward and truthful, whether a witness
19 attempted to conceal anything, whether a witness had
20 a motive to testify falsely, whether there is any
21 reason why a witness might color his testimony.

22 In other words, what you try to do, to use
23 the vernacular, is to size a person up just as you
24 would do in any important matter where you were
25 undertaking to determine whether or not a person is

truthful, candid and straightforward.

Scrutinize the testimony given and the circumstances under which each witness testified, and every matter in evidence which tends to show whether a witness is worthy of belief.

Consider each witness' intelligence, his motive and state of mind, his demeanor and manner while on the witness stand. Consider his ability to observe the matters as to which he testified, whether he shall have impressed you as having an accurate recollection of these matters.

Consider the relation that each witness might bear to either side of the case.

Consider the manner in which each witness might be affected by the verdict and consider the extent to which, if at all, each witness is either supported or contradicted by other evidence.

Evidence that at some other time a witness had said or done something which is inconsistent with the witness' testimony at the trial may be considered by you for the purposes of judging the credibility of that witness. If adopted by the witness, that is, if the witness had admitted before you that he made the prior statement, it may also be used as affirmative

1
2 evidence in the case.

3 You may also consider the failure of the
4 witness to disclose information on prior occasions
5 when the opportunity to do so presented itself as
6 being inconsistent with that witness' testimony here
7 at the trial.

8 Whether a prior statement is inconsistent or
9 not is a fact question solely for your determination.

10 In making that determination you should consider
11 all the facts and circumstances attendant at the time
12 of making the prior statement or the omission of
13 information.

14 In determining whether the prior statement is
15 inconsistent with the testimony given before you,
16 you may take into consideration the nature of the
17 examination here and the purpose of the statement on
18 the prior occasion. You may also take into considera-
19 tion normal variations in the retelling of an event
20 to determine whether the statements are truly incon-
21 sistent or merely a difference in describing an
22 occurrence.

23 It is for you, and you alone, to determine
24 whether an inconsistency is to a material or immaterial
25 fact, and what effect the inconsistency may have on

1
2 the witness' credibility.

3 A witness may be inaccurate, contradictory,
4 or even untruthful in some respects, and yet be
5 entirely credible in the essentials of his testimony.

6 The ultimate question for you to decide in
7 passing upon credibility is: Did the witness tell
8 the truth here before you as to essential matters.

9 If you find that any witness -- and this
10 applies alike to Government and defense -- wilfully
11 testified falsely as to any material facts, you
12 have a right to reject the testimony of that witness
13 in its entirety, or you may accept that part or
14 portion which you believe to be credible.

15 The fact that some Government witnesses are
16 Government employees does not entitle their testimony
17 to any greater weight or consideration than that
18 afforded to any other witness in a case.

19 You will evaluate their credibility the same
20 way you do that of any other witness.

21 Much of the testimony in this case comes from
22 the witness Robert Guncieski, who claims to have been
23 a co-conspirator of the defendants up until he was
24 arrested in late February, 1976. Thus, he claims to
25 have been what the law describes as an accomplice.

1
2 And Mr. Goncieski was an accomplice of the defendants
3 if his testimony is true.

4 An accomplice is one who has united with another
5 person in a commission of a crime, voluntarily and
6 with common intent. An accomplice does not become
7 incompetent as a witness simply because of his
8 participation in the crime charged.

9 Now, after he was arrested, Mr. Goncieski
10 agreed to cooperate with the Drug Enforcement Admini-
11 stration and became an informer. An informer is one
12 who provides evidence against a defendant in return
13 for some personal benefit given him by the Government.

14 Here, you will recall Mr. Goncieski's testimony
15 that in return for his cooperation he was permitted
16 to plead to a lesser charge and he was promised that
17 the extent of his cooperation would be made known to
18 the Judge at the time of his sentencing.

19 If accomplices and informers could never be
20 used on a trial, of course, there would be many crimes
21 involving real and serious guilt in which convictions
22 could not be obtainable. Their testimony, however,
23 must be received with great caution and given such
24 weight as you deem it entitled to be received under
25 all the circumstances of the entire case.

1
2 The law does not prohibit the use of an
3 accomplice or an informer. But whether you approve
4 of their use is not to enter into your consideration
5 in this case. In certain types of crime the Govern-
6 ment of necessity is frequently compelled to rely
7 upon the testimony of accomplices, of persons with
8 criminal records, or of informers. Otherwise, it
9 would be difficult to detect or prosecute some wrong-
10 doers, and this particularly is true in conspiracy
11 cases. Often the Government has no choice in the
12 matter. It must take the witnesses to the transaction
13 as they find them.

14 The testimony of an accomplice or informer
15 alone, if believed by the jury, may be of sufficient
16 weight to sustain a verdict of guilty, even though
17 not corroborated or supported by other evidence.

18 However, I reemphasize that the jury should
19 keep in mind that such testimony is always to be
20 received with caution and weighed with great care.

21 You should never convict a defendant upon the
22 unsupported testimony of an accomplice or informer
23 unless you believe that unsupported testimony beyond
24 a reasonable doubt.

25 You will recall that the Defendant Beverly

1 testified in this case and that the defendant
2 Rodriguez did not.

3
4 With respect to the Defendant Rodriguez, I
5 charge you that the law does not compel a defendant
6 in a criminal case to take the witness stand and
7 testify. And no presumption of guilt may be raised
8 and no inference of any kind may be drawn from the
9 failure of the defendant Rodriguez to testify.

10 As stated before, the law never imposes upon
11 a defendant in a criminal case the burden or duty
12 of calling any witnesses or producing any evidence.

13 With respect to the Defendant Beverly, while
14 the law does not require a defendant to testify, it
15 permits him to do so on his own behalf. Obviously,
16 a defendant has a deep personal interest as a result
17 of his prosecution. Indeed, it is fair to say he has
18 the greatest interest in the outcome.

19 Interest creates a motive for false testimony.
20 And a defendant's interest in the result of his trial
21 is of a character possessed by no other witness.

22 In appraising the credibility of the Defendant
23 Beverly you may take that fact into consideration.
24 However, I want to say with equal force to you, it
25 by no means follows that simply because a person has

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2 a vital interest in the end result, that he is not
3 capable of telling a truthful and straightforward
4 story.

5 It is for you to decide what extent, if at all,
6 the defendant's interest has affected or colored his
7 testimony in this case.

8 Agent Pavlick of the Drug Enforcement Administra-
9 tion testified regarding certain oral statements
10 allegedly made by the Defendant Beverly. These
11 statements which are disputed by the Defendant Beverly
12 were not recorded at the time or reduced to a signed
13 writing.

14 When such a statement is proved by reliable
15 evidence, it should be considered along with all the
16 other evidence in the case. However, evidence as to
17 any oral statement allegedly made outside the
18 courtroom should always be carefully examined. The
19 person who makes the statement may have been mistaken
20 or he may not have expressed clearly the meaning to
21 which he intended.

22 Alternatively, the witness who testifies in the
23 courtroom to the alleged statement, in this case
24 Agent Pavlick, may have misunderstood, misquoted or
25 taken out of the proper context what was actually said.

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1
2 Thus, and in this context, Agent Pavlick's possible
3 interest and bias, if any, should also be considered
4 by you.

5 Evidence relating to any statement claimed to
6 have been made by a defendant outside the courtroom
7 should always be considered with caution and weighed
8 with great care; and all such evidence should be
9 disregarded entirely unless the evidence in the case
10 convinces you beyond a reasonable doubt that the
11 statement was knowingly made.

12 A statement is knowingly made if done voluntarily
13 and intentionally and not because of mistake or
14 accident or other innocent reason.

15 In determining whether any statement claimed
16 to have been made by the defendant outside of the
17 courtroom was knowingly made, the jury should consider
18 the age, sex, training, education, occupation, and
19 physical and mental condition of the defendant, and
20 his treatment while in custody or under interrogation
21 as shown by the evidence in the case; and also all
22 other circumstances in evidence surrounding the
23 making of the alleged statement, including whether
24 before the alleged statement was made the defendant
25 had been read his Constitutional rights and understood

1
2 that he was not obligated or required to make any
3 statement.

4 If the evidence in the case does not convince
5 you beyond a reasonable doubt that the alleged
6 statement was made voluntarily and intentionally you
7 should disregard the statement entirely.

8 On the other hand, if the evidence in the
9 case does show beyond a reasonable doubt that the
10 statement was, in fact, voluntarily and intentionally
11 made by the defendant, you may consider it as
12 evidence.

13 The Defendant Beverly has introduced evidence
14 of his good reputation in the community prior to the
15 indictment in this case. Such evidence may indicate
16 to you that it is improbable that a person of such
17 good character may be predisposed to commit the crime
18 charged. Therefore, the jury should consider this
19 evidence along with all the other evidence in the
20 case in determining the guilt or innocence of the
21 defendant Beverly.

22 The circumstances may be such that evidence of
23 good character alone may create a reasonable doubt
24 of that defendant's guilt, although without it the
25 other evidence would be convincing.

1
2 However, evidence of good reputation should not
3 constitute an excuse to acquit the defendant if the
4 jury, after weighing all the evidence, including the
5 evidence of good character, is convinced beyond a
6 reasonable doubt that that defendant was predisposed
7 to commit the crime charged.

8 The weight of the evidence is not necessarily
9 determined by the number of witnesses who testified
10 on either side. You should consider all the facts
11 and circumstances in evidence in determining which
12 of the witnesses are worthy of credence. You may
13 find the testimony of a smaller number of witnesses
14 on one side is more credible than the greater number
15 of witnesses on the other side.

16 If any facts permit inferences which are
17 equally consistent with guilt and with innocence, you
18 may not consider those as inferences of guilt. But
19 if you are satisfied from the evidence as a whole
20 that any defendant is guilty beyond a reasonable
21 doubt, you should find a verdict of guilty as to him.

22 I have sought not to comment on any evidence
23 in any detail or to give you any impression as to
24 my own view if I have one of the relevant weight of
25 the evidence. If I have done so inadvertently,

1
2 however, I ask you to disregard that entirely because
3 it is you who are the sole judges of the facts.

4 From time to time in the course of the trial
5 objections have been made and rulings on evidence
6 given. Draw no inference from the comparative
7 frequency of objections from one or the other side
8 or from the comparative record of having objections
9 sustained. Where an objection to a question is
10 sustained, disregard the question and draw no in-
11 ferences from its wording about the answer that might
12 have been given.

13 On the other hand, where an objection is
14 overruled, evidence which is then received has no
15 special weight, just because it was unsuccessfully
16 objected to.

17 Under your oath as jurors you cannot allow a
18 consideration of the sentence which may be imposed
19 upon a defendant, if he is convicted, to enter into
20 your deliberations, or to influence your verdict in
21 any way. In the event of a conviction the duty of
22 imposing sentence rests solely with the Court.

23 Now, let us discuss your deliberations, how
24 you should go about reaching your verdicts.

25 When you retire to the jury room your first

1
2 duty would be to elect your foreman or forelady who
3 will preside over your deliberations.

4 During your deliberations you should assume the
5 attitude of judges of the facts rather than of
6 partisans or advocates. In that way you will be
7 making a high contribution to the administration of
8 justice.

9 Your duty is to decide the case solely upon the
10 evidence, to weigh the evidence in the case and to
11 determine the guilt or innocence of the defendants
12 solely upon the basis of such evidence and these
13 instructions.

14 Each of you as jurors is entitled to your own
15 opinion, but each of you should exchange views with
16 your fellow jurors. That is the very purpose of our
17 jury deliberations, to discuss and consider the
18 evidence, to listen to the arguments of your fellow
19 jurors, to present your individual views, to consult
20 with one another, and to reach an agreement based sole-
21 ly and wholly on the evidence if you can do so without
22 violence to your own individual judgment.

23 Each of you must decide the case for yourself
24 after a consideration with your fellow jurors.

25 But you should not hesitate to change an

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2 opinion which, after discussion with your fellow
3 jurors, appears to you to be erroneous.

4 However, if after carefully considering all
5 the evidence and the arguments of your fellow jurors
6 you entertain a conscientious view that differs from
7 the others, you are not to yield your judgments
8 simply because you are outnumbered.

9 Your final vote must reflect your conscientious
10 view as to how the issue should be decided.

11 The charges here are most serious.

12 A just determination of this case is important
13 to the public. It is equally important to these
14 defendants.

15 Under your oath as jurors you must decide this
16 case without fear or favor and solely in accordance
17 with the evidence and the law.

18 If the Government has failed to carry its
19 burden as to a defendant, your sworn duty is to acquit.
20 If it has carried its burden as to a defendant, you
21 must not flinch from your sworn duty; you must convict.

22 Shortly after you retire to deliberate I will
23 send in to you a copy of the indictment and each of
24 the exhibits which has been admitted into evidence.

25 If you wish to have some of the testimony

1
2 repeated, you may make the request and I will call
3 you back into the courtroom and have the reporter
4 locate those portions you desire to hear and read them
5 to you.

6 You must report a verdict on all five counts
7 of the indictment. You may find either defendant
8 guilty or not guilty on any or all of the counts.
9 And the verdict in each case must be unanimous.

10 I have prepared a form of verdict which you may
11 wish to use in keeping track of your verdicts as you
12 reach them. The form basically describes in the
13 first column the number of the count. The second
14 column is a very brief description of what that count
15 relates to. The third column relates to the defendant
16 Rodriguez and provides for either guilty or not guilty
17 on each of the counts. And the fourth column relates
18 to the Defendant Beverly and similarly provides either
19 guilty or not guilty on each of the counts.

20 You are not required to use the form. I simply
21 offer it to you if you find it helpful.

22 The marshal will be available outside the jury
23 room to report when you have reached your verdicts or
24 to let the Court know if there are any questions
25 which you may wish to have answered.

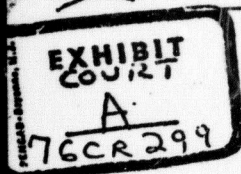
1
2 When you have reached a verdict and are ready
3 to report, simply advise the marshal; but do not
4 disclose to him what your verdict is. I will have
5 your foreman announce it orally back here in the
6 courtroom.

7 There will now be a short recess, during which
8 counsel will review the charge with me to make sure
9 nothing has been omitted or misspoken.

10 You may retire to the jury room and do not
11 discuss the case until I have brought you back here
12 once more.

13 Thank you.

14 (The jury leaves the courtroom at 1:21 PM.)
15



Request NO. 1

An accomplice is one who unites with another person in the commission of an unlawful act. Thus, by his own testimony, Robert Gencieski was an accomplice in the sale of 4 ounces of cocaine at Kennedy Airport on November 4, 1975

~~Accomplice~~

The Testimony of an ^{alleged} accomplice needs to be very carefully scrutinized by a jury ^{and should be regarded with suspicion.} In the first place, the fact that the witness committed a felony shows a defect in his character that may have made him more liable to lie on the witness stand. In the second place, he can be punished for his own offense so that he may be amenable to suggestions by the government ^{agents} as he tries to court the prosecutor's favor and avoid some degree of punishment himself.

You should be very hesitant to convict a defendant if an ^{alleged} accomplice's testimony is unsupported or uncorroborated as it bears upon the guilt of a particular defendant.

If you believe that any witness was induced to testify in this case by any promise, or that any hope was held out that he would be rewarded, or in any way benefit if he implicated the defendant in the crime charged herein, then you may consider that fact in determining what weight should be given to the testimony, scrutinize it closely, and unless you can reconcile it with truth, completely reject it.

757
On Lee v. United States, 343 U.S., 747 (1952) at 757

Request No. 2

An informer is one who provides evidence against a defendant in return for some personal benefit given him by the government. In evaluating the testimony of Robert Guncieski, you should consider the fact that he is an informant. In return for his testimony against the defendants the government has allowed him to plead guilty to a lesser charge and has agreed to make a statement on his behalf to the sentencing judge.

The testimony of an informant must be examined and weighed by the jury with greater care than the testimony of an ordinary witness to determine whether it has been influenced by his own personal interests.

Thus, you should consider carefully Guncieski's interests and motives regarding the case and his own legal problems. In short, you should consider whether his testimony was induced or affected by his desire to reach an agreement with the prosecutor minimizing his potential punishment for the crimes he concededly committed.

Devitt and Blackmar, Federal Jury Practice and Instructions

§ 12.02

United States v. Gonzalez, 491 F.2d 1202 (5th Cir. 1974)

CERTIFICATE OF SERVICE

May 16, 1977

I hereby certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Eastern District of New York.

Barry Bassie